

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. **2010-327**

11 **ELSA NOLASCO**
12 **a.k.a. ELSA J P NOLASCO**
13 **a.k.a. ELSA JIMINEZ-PALER**
14 1439 Prelude Drive
San Jose, CA 95131-3317

ACCUSATION

15 **Registered Nurse License No. RN 464110**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about March 31, 1991, the Board of Registered Nursing issued Registered
24 Nurse License Number RN 464110 to Elsa Nolasco (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 August 31, 2010, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board of Registered Nursing (Board),

1 Department of Consumer Affairs, under the authority of the following laws. All section
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
4 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
5 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
6 Nursing Practice Act.

7 5. Section 2764 states:

8 "The lapsing or suspension of a license by operation of law or by order or decision of
9 the board or a court of law, or the voluntary suspension of a license by a licentiate shall not
10 deprive the board of jurisdiction to proceed with any investigation of or disciplinary proceeding
11 against such license, or to render a decision suspending or revoking such license."

12 6. Section 2811, subdivision (b), provides in pertinent part, that each license not
13 renewed in accordance with that section shall expire, but may within a period of eight years
14 thereafter be reinstated.

15 7. Section 2761 of the Code states:

16 "The board may take disciplinary action against a certified or licensed nurse or deny an
17 application for a certificate or license for any of the following:

18 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

19 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
20 functions.

21 ..."

22 8. California Code of Regulations, title 16, section 1442, states:

23 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
24 the standard of care which, under similar circumstances, would have ordinarily been exercised by
25 a competent registered nurse. Such an extreme departure means the repeated failure to provide
26 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
27 situation which the nurse knew, or should have known, could have jeopardized the client's health
28 or life."

1 9. California Code of Regulations, title 16, section 1443, states:

2 "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the
3 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
4 exercised by a competent registered nurse as described in Section 1443.5."

5 10. California Code of Regulations, title 16, section 1443.5 states:

6 "A registered nurse shall be considered to be competent when he/she
7 consistently demonstrates the ability to transfer scientific knowledge from social, biological and
8 physical sciences in applying the nursing process, as follows:

9 "(1) Formulates a nursing diagnosis through observation of the client's physical
10 condition and behavior, and through interpretation of information obtained from the client and
11 others, including the health team.

12 "(2) Formulates a care plan, in collaboration with the client, which ensures that
13 direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and
14 protection, and for disease prevention and restorative measures.

15 "(3) Performs skills essential to the kind of nursing action to be taken, explains
16 the health treatment to the client and family and teaches the client and family how to care for the
17 client's health needs.

18 "(4) Delegates tasks to subordinates based on the legal scopes of practice of the
19 subordinates and on the preparation and capability needed in the tasks to be delegated, and
20 effectively supervises nursing care being given by subordinates.

21 "(5) Evaluates the effectiveness of the care plan through observation of the
22 client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment
23 and through communication with the client and health team members, and modifies the plan as
24 needed.

25 "(6) Acts as the client's advocate, as circumstances require, by initiating action to
26 improve health care or to change decisions or activities which are against the interests or wishes
27 of the client, and by giving the client the opportunity to make informed decisions about health
28 care before it is provided."

11. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

12. Phenergan is the brand name of promethazine hydrochloride. It is a dangerous drug pursuant to section 4022 of the Code. Phenergan is used to treat nausea and vomiting. It is also used as a pre-operative and post-operative sedative.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent is subject to disciplinary action under section 2671(a)(1) of the Code in that Respondent committed gross negligence in carrying out usual licensed nursing functions. The circumstances are as follows:

a. On or about August 13, 2005, Respondent was working as a charge nurse at Good Samaritan Hospital in San Jose, California.

b. Respondent injected Phenergan in Patient JG's right hand through an arterial line. Respondent failed to recognize the line was in Patient JG's artery and not his vein. Respondent failed to ensure the Phenergan was injected through a proper intravenous line.

c. Respondent administered Phenergan to “abate possible nausea” and to “help with abdominal pain.” Patient JG did not have nausea when Respondent administered Phenergan. Respondent failed to administer Phenergan for its intended purpose.

d. Respondent administered the Phenergan in 30 seconds as opposed to the recommended 1 minute.

e. Patient JG immediately complained of pain when Respondent administered the Phenergan. Respondent failed to recognize this was an abnormal reaction consistent with an arterial injection.

f. Respondent failed to notify a medical doctor of Patient JG's abnormal pain assessment and reaction to the Phenergan administration.

- 1 g. Respondent failed to document Patient JG's adverse drug reaction.
2 h. Patient JG had to have three fingers amputated from his right hand as a result of
3 the arterial administration of Phenergan.

4 SECOND CAUSE FOR DISCIPLINE

5 (Incompetence)

6 14. Respondent is subject to disciplinary action under section 2671(a)(1) of the Code in
7 that Respondent committed incompetence in carrying out usual licensed nursing functions. The
8 circumstances are described in paragraph 10, above.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Registered Nursing issue a decision:

- 12 1. Revoking or suspending Registered Nurse License Number RN 464110, issued to
13 Elsa Nolasco Elsa.
14 2. Ordering Elsa Nolasco to pay the Board of Registered Nursing the reasonable costs of
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;
17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 1/12/10

19 *Louise R. Bailey*
20 LOUISE R. BAILEY, M.ED., RN
21 Interim Executive Officer
22 Board of Registered Nursing
23 Department of Consumer Affairs
24 State of California
25 Complainant

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